

September 1994

## **PECFA UPDATE #5**

DEAR PECFA CONSULTANTS & FUND PARTICIPANTS:

Enclosed is the fifth PECFA UPDATE. This issue discusses; procedural changes, the new legislation signed in the spring of 1994, and stockpiles of contaminated soil. The staff would also like to take this opportunity to help all of our customers who have a stake in the PECFA fund to appreciate the size and girth of the program.

- Currently the backlog of claims to be paid is seven (7) months.
- The amount claimed in the backlog (not including interest) as of July 31, 1994 is \$40,428,793.59
- Claim amount paid in July 1994 was \$4,361,512.39. Claim amount paid in fiscal 1994 (as of July 31, 1994) was \$34,852,448.52
- Currently, the Remedial Alternatives (92) are backlogged six (6) weeks.
- Currently, Site Eligibility Letters are backlogged three (3) months.
- PECFA Staff is comprised of: 1 Section Chief, 2 Clerical, 1 Financial Manager, 6 Claim Reviewers and 1 Remedial Reviewer.
- Other duties for the staff include: Emergency Action review and approval, \$40,000 exceedence review and approval, Change Order review and approval, Commodity cost exceedence, Appeal processing and testimony, Letter/Fax correspondence and Phone calls (400 incoming/week).

Please help us by corresponding only when other sources of information have been exhausted and be precise and specific with your questions. Please do not contact the PECFA staff with hypothetical scenarios.

attachments

ADDITIONAL  
INFORMATION  
REQUESTS

Additional information requests are currently being made only for information essential to the audit of the claim (reports, forms and signatures). Other documentation (canceled checks and invoices) not included in the claim will not be reimbursed.

APPEALS

After September 1, 1994 ineligible costs not reimbursed by the PECFA program can be appealed only to DILHR Legal Counsel. DILHR Legal Counsel shall utilize the a formal hearing in the decision process. Appeal information is now included on each reimbursement correspondence. There is currently a six (6) month backlog for a hearing assignment, non-eligible and disqualified claim appeals. Costs submitted to the fund for reimbursement must have adequate supporting documentation!

CONSULTANT  
LISTS

The list of PECFA registered consultants and consulting firms are available from Luann Robb, phone (608) 266-8980.

*DILHR ON-LINE*  
FOR TANK  
REGISTRATION

A free, 24 hours a day, 7 days a week computer bulletin board system operated by DILHR is available for many of the Department's programs, including the UST/AST registration files. Use this service to copy (use "print screen") to copy the tank inventory information. This copy will fulfill the Chapter ILHR 47.12(1)(d) requirements. Connect with your computer modem to 608/264-6813 or contact Marty Shannon (608) 267-4438 with *DILHR ON-LINE* questions. **Avoid calling the Tank Registration Staff if possible!**

DOCUMENT  
SALES

Chapter ILHR 47, WI Administrative Code is available through Dept. of Administration, Document Sales only. Phone (608) 266-3358 or 1-800 362-7253 for credit card sales. The cost is \$5.00. DILHR or PECFA staff do not sell or distribute the code.

FARM TANKS

Three criteria of eligibility is required: (1) 35 or more acres of contiguous land devoted primarily to agricultural use, (2) a letter from the DNR directing or ordering a site investigation and/or remedial action and (3) \$6,000 income from agricultural goods (or \$18,000 over 3 years) in the year subsequent to submittal of the PECFA claim with DNR Form 4 approval. Additional information is included within the attached summary of changes in Section 101.143, Wisc. Stats. (Senate Bill 15).

FINANCIAL  
MANAGEMENT

PECFA Claim Reviewers will begin to closely scrutinize the financial management of each claim. Interest costs and/or annual renewal fees may not be reimbursed if the period between the final invoice in the claim and the DNR Form 4 signature is not reasonable, or if a continued pattern of the claim submittal coincides with the annual renewal date of the loan. The claimant, consulting firm and assignee of proceeds will be notified if the Department suspects a continuing pattern of claim submittal coinciding with the annual renewal date of the loan.

#### IRS W-9

The Internal Revenue Service regulations require that the claimant complete the W-9 form (enclosed) at the time of claim submittal. This form is now included in the PECFA Claim Package. The claim cannot be reimbursed without the W-9 form and may subject the claimant to a 31% withholding.

#### REMEDIAL ACTIVITIES

Per Section ILHR 47.33 and 47.335 remediation activities shall be identified as Phase I, II and III. Each phase has a maximum reimbursable amount and must be clearly separated at the time of claim submittal. The Department has identified the activities for each Phase as the following but, not limited to:

- Phase I Activities to define the degree and extent of the contamination, preparation of the RAP, maintenance, bid preparation, report(s), feasibility studies if appropriate, and submittal of the claim reflecting investigation costs.
- Phase II Activities associated with the design and implementation of the RAP, the first year of operation and maintenance (O&M), bid preparation, report(s), feasibility studies if appropriate, and submittal of the claim reflecting O&M costs.
- Phase III Activities associated with the long term O&M or long term monitoring costs (after the first year of O&M), bid preparation, report(s), and submittal of the claim reflecting long term O&M costs.

#### NEW CLAIM FORMS

New PECFA claim submittal forms have been developed and a sample is attached. Do not use the attached sample forms for actual claim submittals.

#### REMEDIAL ALTERNATIVES

A summary of Section ILHR 47.33(2) REMEDIATION and 47.335(3) CONSIDERATION OF ALTERNATIVES and items to be included within the detailed cost is attached. Per Section ILHR 47.335(2)(c) the comparison shall be submitted to both the DNR and DILHR if the total remedial costs are >\$80,000.

#### SENATE BILL 15 (1993 Wisc Act 416)

A copy of summary of Senate Bill 15 (SB 15), enacted April 22, 1994, is attached. The Department is required to incorporate SB 15 into Chapter ILHR 47 by January 1, 1996 and will be starting the rule making process shortly.

#### SITE ELIGIBILITY LETTER (SEL)

Currently there is a three (3) month backlog for the Department's response to SELs. An "Initial Request Form" and claim number must be established prior to the Department's response to a SEL. Following the steps listed below will permit the Department to process the SELs in a more timely matter.

- The PECFA claim number must be included within the SEL. SELs without a PECFA claim number shall be returned;

## STOCKPILES

- The SEL must be signed by the claimant or the claimant's legal counsel. SELs signed by a consultant shall be returned, and
- Farm SELs must satisfy the three (3) eligibility requirements stated previously in this "UPDATE".

Section ILHR 47.33(2) REMEDIATION states: "The estimated costs for these items shall be submitted to the department as part of the comparison of remedial alternatives or, if the submittal of the alternatives is not required as specified in s. ILHR 47.335(3)(c), prior to the start of the remedial activities." This rule is effective for projects with a contract signed after February 1, 1993.

The Department has further defined remedial activities as those activities in the field associated with remediation activities. This activities include but, are not limited to: excavation, soil treatment/disposal, remedial building construction, and in-situ trenching.

The Department will not approve "phased" remediations. Time commitments to PECFA's primary function, review and payment of environmental cleanups, will not be served by responding to each stockpile of soil. Understand that the Department is not prohibiting the remediation of soils but if Chapter ILHR 47 is not complied with, the claimant may not be reimbursed and/or the consulting firm/consultant may be disqualified from participating in the PECFA program.

"PECFA UPDATE #3 stated: "Costs associated with stockpiled soils (including excavation, trucking, lab analysis and remediation) prior to DNR notification of a release and/or prior to establishment of reimbursable maximum [S. ILHR 47.33(2) REMEDIATION] shall be considered to be activities associated with the tank removal and shall not be reimbursed."

## TANK REMOVAL COSTS

Tank removal costs shall not be included in the claims. This prohibition was effective November 1, 1991!

